

AS-AVAILABLE CAPACITY SALES AGREEMENT

BETWEEN

DUKE ENERGY CAROLINAS, LLC

AND

DUKE ENERGY PROGRESS, LLC

(Duke Energy Carolinas, LLC Rate Schedule No. 345)

(Duke Energy Progress, LLC Rate Schedule No. 198)

Tariff Submitter: Duke Energy Carolinas, LLC
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AS-AVAILABLE CAPACITY SALES AGREEMENT

THIS AS-AVAILABLE CAPACITY SALES AGREEMENT (“Agreement”) is made and entered into as of _____, 2018, by and between Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively referred to herein as the “Parties” and individually as a “Party”).

WHEREAS, DEC and DEP are subsidiaries of Duke Energy Corporation; and

WHEREAS, DEC AND DEP are owners and operators of separate electric generation, transmission and distribution facilities and are engaged in the business of generating, transmitting, distributing, and selling electric energy to the retail customers in their respective franchised service areas in North Carolina and South Carolina and also at wholesale to their respective municipal and cooperative customers and off-system customers; and

WHEREAS, DEC and DEP jointly dispatch their power supply resources in order to most economically serve the native load customers of both DEC and DEP under the Joint Dispatch Agreement (“JDA”);

WHEREAS, the JDA provides for the sale of energy between the Parties and the sharing of savings resulting from joint dispatch between the Parties but does not provide for one Party to sell Capacity to the other Party; and

WHEREAS, the Parties desire to establish a framework under which they can sell temporarily excess Capacity to each other in order to more economically operate each of their systems while maintaining reliability and to most economically serve the native load customers of both DEC and DEP; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties mutually agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms shall have the meanings set forth below in this Article I. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this Agreement or as commonly used in the electric utility industry.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” or **“BAA”** means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority within which the Balancing Authority maintains the load-resource balance.

“Benchmark Price” means \$123.56 per MW-DAY, which is the five year arithmetic average of capacity prices, as determined under Section 4.4.

“**Capacity**” means the capability to generate electrical energy.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Industry Standards**” means all applicable national and regional electric reliability council principles, guides, criteria, and standards and industry standard practices.

“**JDA**” means the Joint Dispatch Agreement between the Parties effective July 2, 2012, as it may be amended.

“**NCUC**” means the North Carolina Utilities Commission.

“**OATT**” means the Joint Open Access Transmission Tariff of DEP, DEC, and Duke Energy Florida, LLC, as amended from time to time.

“**PJM**” means PJM Interconnection, L.L.C.

“**PSCSC**” means the Public Service Commission of South Carolina.

“**VACAR**” means the Virginia-Carolinas sub region within the North American Electric Reliability Corporation's (NERC) SERC Reliability Corporation (SERC).

“**VACAR Reserve Sharing Group Arrangement**” means the collection of agreements and procedures developed concurrently by the Principals and Operating Representatives of multiple two-party Interchange Agreements as described in the Operating Manual for the VACAR Reserve Sharing Group Arrangement, Revision No. 2, dated January 11, 2011 by and among Dominion, DEC, DEP, South Carolina Electric & Gas Company and South Carolina Public Service Authority, as amended.

ARTICLE II TERM OF AGREEMENT

2.1 Term.

Subject to approval and any conditions imposed by state and federal regulatory authorities, this Agreement shall take effect upon a date designated by mutual agreement of the Parties, which shall occur after acceptance or approval of this Agreement without material modification by the NCUC, the PSCSC, and the FERC. The term of this Agreement shall end May 31, 2022, unless extended as follows. Beginning with the PJM Delivery Year commencing June 1, 2022 and ending May 31, 2023, and for each PJM Delivery Year thereafter, if the price for sales of Capacity hereunder as determined under Section 4.4 would be equal to or less than the Benchmark Price, then the term of this Agreement automatically shall be extended through the end of such PJM Delivery Year ending May 31. If the price for sales of Capacity hereunder as calculated pursuant to Section 4.4 would be greater than the Benchmark Price, then the term of this Agreement automatically will terminate as of May 31 of the preceding PJM Delivery Year. For the avoidance of doubt, if, for example, the results of the PJM auction conducted for the Delivery Year commencing June 1, 2022 and ending May 31, 2023 indicate that the price of Capacity (as

calculated pursuant to Section 4.4) would exceed the Benchmark Price, then the Agreement will terminate on May 31, 2022. Notwithstanding the foregoing, either Party may terminate this Agreement for any reason or no reason at any time upon six months advance written notice to the other Party.

ARTICLE III SCOPE OF THE AGREEMENT

3.1 Purpose.

The purpose of this Agreement is to provide the contractual basis for one Party to sell temporarily excess Capacity to the other Party in order to reduce the cost of serving their respective native load customers in a manner consistent with Industry Standards and applicable laws and regulations.

3.2 Limits on Scope and Effect of the Agreement.

(a) Nothing in this Agreement is intended to or shall it be construed as:

- (i) Providing for or requiring a single integrated electric system;
- (ii) Providing for or requiring a single BAA, control area or transmission system;
- (iii) Providing for or requiring joint planning or joint development of generation or transmission;
- (iv) Providing for or requiring a Party to construct generation or transmission facilities for the benefit of the other Party;
- (v) Selling any rights to specific generation or transmission facilities from one Party to the other (except for the sale of temporarily excess Capacity as specifically set forth herein); or
- (vi) Providing for or requiring any equalization of the Parties' production costs or rates.

(b) To the extent that the Parties desire to engage in any of the activities or take any of the actions described in Section 3.2(a), the Parties will enter into a separate agreement, subject to approval by the applicable state and federal regulatory authorities.

ARTICLE IV

CAPACITY SALES

4.1 Quantity.

DEC and DEP may sell temporarily excess Capacity to each other for time periods when the following circumstances exist: (1) one Party (the “Provider”) is projected to have more Capacity than is required to meet applicable reliability standards, (2) the other Party (the “Recipient”) has determined that it would benefit from an acquisition of Capacity, and (3) to the best of Recipient’s knowledge after making reasonable market inquiries under the circumstances, there are not at that time more economical alternatives available for Recipient’s acquisition of Capacity. Recipient will retain for a period of five years after the transaction documentation of its market inquiries. Nothing in this Agreement will require that a Party maintain or construct Capacity to be available for the other Party in any amount at any time.

4.2 Duration.

The duration for which a Party sells its temporarily excess Capacity to the other Party hereunder in any single transaction may be for a time period of not less than four (4) consecutive hours and not more than seven (7) consecutive calendar days.

4.3 Firm Transmission.

For any time period for which the Parties sell excess Capacity hereunder as provided in Section 4.1 of this Agreement, the Recipient shall procure firm transmission service into the BAA of the Recipient for the full quantity of such Capacity for such time period. Any such procurement of firm transmission service will be made under the terms of the OATT. No transmission service will be provided under this Agreement. The Parties expressly acknowledge their obligations to comply with any applicable commitments that the Parties may have to reserve for third parties firm transmission from the BAA of DEC into the BAA of DEP East under the market power mitigation plan accepted by FERC by order issued June 8, 2012 at para. 89, 31-33, in FERC Docket No. EC11-60. Nothing herein is intended to modify such commitments.

4.4 Price.

(a) The capitalized terms used in this Section 4.4 that are not otherwise defined in Article I shall have the meanings given to them in the PJM Reliability Pricing Model set forth in the PJM Open Access Transmission Tariff, Attachment DD.

(b) The price of Capacity sold hereunder shall be the weighted average of the price of (1) Capacity Performance Resource (“CPR”), (2) Base Capacity Resource (“BCR”), and (3) Annual Resource (“AR”), cleared in the Base Residual Auction (“BRA”) and Transitional Incremental Auction (applicable for DY 2017-18) in the RTO Locational Delivery Area (“RTO LDA”) for each Delivery Year (“DY”) during the term of this Agreement, in dollars per megawatt-day (\$/ MW-Day), as determined through the following formula:

Capacity price = ((DY CPR price CPR percentage) + (DY BCR price* BCR percentage) + (DY AR BRA price* AR percentage))*

such that $\text{CPR Percentage} + \text{BCR Percentage} + \text{AR Percentage} = 100\%$

where

DY CPR price is the RTO LDA price cleared for CPR in BRA or Transitional Incremental Auction of the applicable DY

DY BCR price is the RTO LDA price cleared for BCR in BRA of the applicable DY

DY AR price is the RTO LDA price cleared for AR in BRA of the applicable DY

CPR Percentage is the percentage of Capacity Resources that are cleared in BRA or Transitional Incremental Auction of the applicable DY that are composed of CPR

BCR Percentage is the percentage of Capacity Resources that are cleared in BRA of the applicable DY that are composed of BCR

AR Percentage is the percentage of Capacity Resources that are cleared in BRA of the applicable DY that are composed of AR

(c) For DY 2017/2018 through 2022/2023 and beyond the Capacity Price shall be:

DY 2017-2018

$$((\$151.5 * 70\%) + (\$BCR * 0\%) + (\$120 * 30\%)) = \$142.05 \text{ per MW-DAY}$$

DY 2018-2019

$$((\$164.77 * 84.27\%) + (\$149.98 * 15.73\%) + (\$AR * 0\%)) = \$162.44 \text{ per MW-DAY}$$

DY 2019-2020

$$((\$100 * 83.86\%) + (\$80 * 16.14\%) + (\$AR * 0\%)) = \$96.77 \text{ per MW-DAY}$$

DY 2020-2021

$$((\$76.53 * 100\%) + (\$0 * 0\%) + (\$0 * 0\%)) = \$76.53 \text{ per MW-DAY}$$

DY 2021-2022

$$((\$140 * 100\%) + (\$0 * 0\%) + (\$0 * 0\%)) = \$140 \text{ per MW-DAY}$$

DY 2022-2023 and beyond

$$((\$CPR * 100\%) + (\$BCR * 0\%) + (\$AR * 0\%)) = \$ \text{ per MW-DAY}$$

In 2017/2018 BRA, 70% of the Capacity Resources procured by PJM were CPR, and 30% were AR. In 2018/2019 BRA, 84.27% of the Capacity Resources procured by PJM were CPR and 15.73% were BCR. In 2019/2020 BRA, 83.86% of the Capacity Resources procured by PJM were CPR and 16.14% were BCR. For 2020/2021 BRA and beyond, 100% of the Capacity Resources procured by PJM will be CPR.

(d) For sales of Capacity which are of a duration less than one day, the price per hour for each MW of Capacity sold shall be the price per MW-DAY as determined under Section 4.4 (a) - (c) divided by twenty-four (24).

4.5 No Energy; No Modification of JDA.

The Parties will not buy and sell energy under this Agreement. Energy transactions between the Parties will occur under the provisions of the JDA. Nothing in this Agreement is intended to modify or alter any of the provisions of the JDA.

**ARTICLE V
RESERVED**

**ARTICLE VI
COMPLIANCE WITH CONTRACTUAL AND REGULATORY OBLIGATIONS**

Nothing in this Agreement is intended to diminish or alter the jurisdiction or authority of the NCUC or the PSCSC over the Parties, including, among other things, the jurisdiction and authority to establish the retail rates on a bundled basis for each of the Parties, to impose regulatory accounting and reporting requirements, to impose service quality standards, to require each of the Parties to engage separately in least cost integrated resource planning, or to issue certificates of public convenience and necessity for new generating resources. In addition, nothing in this Agreement is intended to alter the Parties' contractual or regulatory obligations or to provide for Capacity sales in a fashion that is inconsistent with those obligations, including, without limitation, the following:

(a) DEC's obligation to plan for and provide least cost electric service to its native load customers, and DEP's obligation to plan for and provide least cost electric service to its native load customers;

(b) All of DEC's and DEP's respective obligations under wholesale purchase contracts, including contracts for the purchase of energy and Capacity on a non-dispatchable basis;

(c) All of DEC's and DEP's respective obligations under wholesale sales contracts, including obligations under full and partial requirements sales contracts;

(d) All of DEC's and DEP's respective obligations under reliability exchange agreements existing prior to the effective date of this Agreement;

(e) DEC's and DEP's respective transmission rights and obligations, including rights and obligations under any transmission service agreements or transmission tariffs and their respective obligations to provide transmission services and to act as the Balancing Authority for their respective BAAs; and

(f) DEC's and DEP's respective individual obligations under the VACAR Reserve Sharing Group Arrangement.

ARTICLE VII

RESERVED**ARTICLE VIII
INDUSTRY STANDARDS****8.1 Adherence to Reliability Criteria.**

The Parties agree to conform to Industry Standards applicable reliability criteria and agreements as they affect the Parties' implementation and performance of this Agreement.

**ARTICLE IX
GENERAL****9.1 No Third Party Beneficiaries.**

This Agreement does not create rights of any character whatsoever in favor of any person, corporation, association, entity or power supplier, other than the Parties, and the obligations herein assumed by the Parties are solely for the use and benefit of said Parties. Nothing in this Agreement shall be construed as permitting or vesting, or attempting to permit or vest, in any person, corporation, association, entity or power supplier, other than the Parties, any rights hereunder or in any of the resources or facilities owned or controlled by the Parties or the use thereof.

9.2 Waivers.

Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement, shall not be deemed a waiver of such right.

9.3 Successors and Assigns.

This Agreement shall inure to the benefit of and be binding only upon the Parties and their respective successors and assigns, and shall not be assignable by any Party without the written consent of the other Party except to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure whereby substantially all such properties are acquired by or merged with those of such a successor, subject to all relevant state and federal regulatory approvals. Prior to any assignment occurring, approval of the NCUC and the PSCSC must be obtained.

9.4 Liability and Indemnification.

Subject to any applicable state or federal law which may specifically restrict limitations on liability, each Party shall release, indemnify, and hold harmless the other Party, its directors, officers and employees from and against any and all liability for loss, damage or expense alleged to arise from, or incidental to, injury to persons and/or damage to property in connection with its facilities or the production or transmission of electric energy by or through such facilities, or

related to performance or non-performance of this Agreement, including any negligence arising hereunder. In no event shall any Party be liable to another Party for any indirect, special, incidental or consequential damages with respect to any claim arising out of this Agreement.

9.5 Section Headings.

The descriptive headings of the Articles and Sections of this Agreement are used for convenience only and shall not modify or restrict any of the terms and provisions thereof.

9.6 Notice.

Any notice or demand for performance required or permitted under any of the provisions of this Agreement shall be deemed to have been given on the date of such notice, in writing, is deposited in the U.S. mail, postage prepaid, certified or registered mail, addressed to:

Director System Optimization
526 South Church Street
Charlotte, NC 28202

Director Power Trading & Dispatch
526 South Church Street
Charlotte, NC 28202

or in such other form or to such other address as the Parties may stipulate.

ARTICLE X REGULATORY APPROVAL

10.1 Regulatory Authorization.

The effectiveness of this Agreement is subject to and conditioned upon:

- (a) Acceptance for filing without material condition or modification by the FERC; and
- (b) The Parties obtaining all necessary approvals from state regulatory authorities to enter into the Agreement, in all cases without material condition or modification.

10.2 Changes.

It is contemplated by the Parties that it may be appropriate from time to time to change, amend, modify or supplement this Agreement to reflect changes in operating practices or costs of operations or for other reasons. Any such changes to this Agreement shall be in writing executed by the Parties, subject to all necessary state and federal regulatory authorizations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officers on the day and year first above written.

DUKE ENERGY CAROLINAS, LLC

By: _____
Name: Eric S. Grant
Title: Vice President, Fuels & Systems Optimization

DUKE ENERGY PROGRESS, LLC

By: _____
Name: John A. Verderame
Title: Managing Director, Power Trading & Dispatch